

Revised 03/06 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

10CV6234 (FC)

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. KARVIA A. HAMILTON DIN# 04A5214

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. M. ERHARDT

4. W. Murray

2. J. Cartwright

5. Brain Fischer

3. James Conway

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: KARVIA HAMILTON DIN# 04A5214

Present Place of Confinement & Address: Sing Sing Correctional Facility, 354
Hunter Street, Ossining, New York 10562

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: M. ERHARDT

(If applicable) Official Position of Defendant: Sergeant

(If applicable) Defendant is Sued in their Individual (and/or their Official Capacity

Address of Defendant: Attica Correctional Facility, P.O. Box 149, Attica, New York 14011-0149 (Place of employment)

Name of Defendant: J. Cartwright

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in their Individual and/or their Official Capacity

Address of Defendant: Attica Correctional Facility, P.O. Box 149, Attica, New York 14011-0149 (Place of employment)

Name of Defendant: W. Murray

(If applicable) Official Position of Defendant: Lieutenant

(If applicable) Defendant is Sued in their Individual and/or their Official Capacity

Address of Defendant: Attica Correctional Facility, P.O. Box 149, Attica, New York 14011-0149 (Place of employment)

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): KARVIA HAMILTON

Defendant(s): STATE OF NEW YORK

2. Court (if federal court, name the district; if state court, name the county): ALBANY, NEW YORK

3. Docket or Index Number: # 116388

4. Name of Judge to whom case was assigned: RICHARD E. SISE

Attachment from page 2

DEFENDANT'S INFORMATION NOTE:

Name of Defendant: James T. Conway

(If applicable) Official Position of Defendant: Superintendent

(If applicable) Defendant is Sued in their Individual and /or their Official Capacity

Address of Defendant: Attica Correctional Facility, P.O. Box 149
Attica, New York 14011-0149 (Place of employment)

Name of Defendant: Brian Fischer

(If applicable) Official Position of Defendant: Commissioner

(If applicable) Defendant is Sued in their Individual and /or their Official Capacity

Address of Defendant: The Harriman State Campus, 1220
Washington Avenue - Building #2, Albany N.Y. 12226-2050

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and /or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and /or _____ Official Capacity

Address of Defendant: _____

5. The approximate date the action was filed: February 5th 2009

6. What was the disposition of the case?

Is it still pending? Yes ☒ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

STATEMENT OF FACT

1. On the morning of October 10, 2008, at approximately 10:28 am, I was on my way to "D-Block Yard" for recreation at Attica Correctional Facility ("ACF"). On my way to the yard, Sergeant Erhardt and a couple of officers ordered me to "get against the wall," and subjected me to a random pat frisk ("search"). Upon complying willingly with the search, it did not produce any prison contraband. The search was completed and Sergeant Erhardt informed me that, "you need to cut your beard and also cut your hair; or else, whenever I 'm working in D-Block you will never go to the yard." I responded by telling him that, "I respect your authority as a sergeant, but me growing my hair and beard is my religious belief and I have a right to do so." Sergeant Erhardt then replied, "I don't give a fuck about you or your religion belief. You just have that shit cut off or else!"

2. Subsequent to the encounter with Sergeant Erhardt, Officer Cartwright and a couple of other C.O.s who were present began laughing and mocking me. Thereafter, Sergeant Erhardt ordered me to go back to my cell, because I am not going to any yard recreation. I went back to my cell location and read the ACF Inmate Orientation Guideline Manual, and was perplexed and confused because the "Manual" stated that one could grow their beard or mustache if such person is a member of a religious group, which has an established tenet against the trimming of beard. I could not understand why the harassments were taking place, and could only view it as a discrimination against my religion.

3. On October 12, 2008, at approximately 10: 28 am, I was heading to recreation in the same yard. I heard a loud voice shouting from behind, "hey you Mr. Hamilton, come here!" I looked back and saw a C.O. Cartwright. Officer Cartwright called me back and said, "do you have a permit on you for your beard that the sergeant on Friday morning said that you're supposed to have?" I replied, "No, I didn't need one because my religion, which is Rastafarian, prohibit against the trimming of beard. Furthermore, this is my protected right." Officer Cartwright responded by saying: " then you cannot go to the yard, take it back the fuck inside!"

4. Based on the words and actions from both the officer and the sergeant on Friday morning. It solidified that this was not a case of misunderstanding, or misjudgment. Instead, it is a case of religious discrimination, hatred, and harassment. Additionally, officer J. Cartwright, who kept going into my cell and searching it, and confiscating my religious articles then turn off the electricity in my cell compounded the matter. See, grievance #A - 52540 -07 recorded by CORC on November 19, 2007, attached hereto as exhibit ____.

5. On the morning of Wednesday October 15, 2008, at approximately 8:28 am, I was on my way to school from D-Block 37 company. Sergeant Erhardt saw me in the line up with other inmates and ordered me to "step out of the line," while ordering the rest of the inmates to continue on. After the rest of the inmates left, Sergeant Erhardt told me that "he 's tired of my fucking games and right now, right now; I am giving you a direct order today, today! Right on the spot to cut your beard off and if you don't comply, I am going to write you up for: (1) disobeying a direct order, and (2) for growing your beard above 1 inch. Make sure that you return back to your company when breakfast is over or if you want, it could get worst and you lose a couple of your teeth, or your fucking life."

6. I was in the Chapel mess hall eating when C. O. Berry came to me and stated " Mr. Hamilton, I think you screwed up real bad. Mr. Hamilton, you have piss off the wrong person and there is on getting out of it this time. " I am here to take you back to the company to do what the sergeant told you to do this morning, and you better not resist because he is real mad at you and you might get hurt." As soon as I finished eating and the company that I came to the mess hall with was ready to go to school and vocational program. C. O. Berry ordered me to "get against the wall in the mess hall and gave me a pat frisk search. After the search was completed, which didn't produce any prison contraband; officer Berry informed me "you will be going back to your cell." Officer Berry escorted me back to 37 Company, and I saw sergeant Erhardt in the hallway. I stopped sergeant Erhardt and said "Sir I have letters from the New York State Department of Correctional Services ("DOCS"), Ministerial and Family Services, and a one inch beard waiver application form that I have submitted to the Rastafarian Chaplains. I am still awaiting a response."

Sergeant Erhardt stopped me in my track, and stated that "I don't want to hear no shit; you are keeplock if you don't cut that shit off today; like I told you earlier." He then walked away from me. I walked back to my company and informed the company porter (janitor) "I need to borrow your beard trimmer to cut my beard off". The company janitor told me "he will be with me in a few minutes."

7. After he [the porter] told me this, officer Smolak who was working "37 Company" at the time told, "the sergeant is out in the hallway writing the ticket, but if I cut it down; he might can convince him to tear the ticket up and throw it away in the garbage. While I was into my cell waiting for the janitor to arrive with the Beard Trimmer, I saw sergeant Erhardt and Superintendent James Conway walked past my cell. They looked like they were doing a "tour of D-Block". I shout out real loud, "Mr. Conway, Mr. Conway! Need to speak to you, it's very important!" Superintendent J. Conway and Sergeant Erhardt turned back and came in front of my cell. As I was about to explain the situation to Superintendent J. Conway, sergeant Erhardt intervened and told Superintendent J. Conway that, "don't listen to this guy, he want to talk to you about that stupid beard that he have that he don't want to cut; just leave him alone, he is looking for somebody to rescue him". After sergeant Erhardt finish talking, he and Supt. Conway turned from my cell and continued to proceed up the company.

After that didn't work, I came to the conclusion that I wasn't getting around preventing my rights from being violated. A few minutes afterward the janitor came with his Beard Trimmer, and I asked him to cut my beard off, and he complied. The next day to my surprise, I was issued a misbehavior report (disciplinary ticket) written by Sergeant Erhardt. Sergeant Erhardt wrote me up for: (a) disobeying a direct order. (b) growing a beard above one inch, and (c) lying and making false statements. I was surprised to receive this misbehavior because C. O. Smolak mentioned "if you cut your beard, or at least cut it down; may be he convince the sergeant to tear the ticket up and throw it in the garbage. I was found guilty when I went to the Tier Hearing disciplinary proceeding and was given prison sanctions. I appealed to the Superintendent and he affirmed the Tier Hearing conviction render by Lt. W. Murray.

~~CHOKED, Threatened, Cell Trashed~~

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

FORM 2131E (REV. 6/06)

INMATE GRIEVANCE COMPLAINT

Grievance No.

52540-07

Attica

CORRECTIONAL FACILITY

Date

Name Karvia Hamilton Dept. No. 04-A-5214 Housing Unit D-42-11
 Program _____ AM _____ PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible)

See Attachment

Grievant
Signature

Grievance Clerk

Date:

25 SEP 2007

Advisor Requested ☐ YES ☐ NO Who: _____

Action requested by inmate: _____

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:
 (To be completed only if resolved prior to hearing)

Grievant
Signature

This grievance has been coded as a harassment grievance. It has been sent directly to the Superintendent's Office for investigation. As soon as the investigation is complete, you will receive a response from the Superintendent or his designee. You need do nothing until you get that response. This copy and grievance number are for your personal files.

1793-94

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

CHOKED, Threaten, CELL Trashed

49

52540-07

Karvia Hamilton

04-A-5214

D4-42-11-

Grievance

On the 20th of September 2007 at around 1:15 pm. I was in my cell, laying down on the top of my bed. My cell was cracked open by the C.O. in the "bubble". When I look in front my cell, I saw C.O. Meyers and C.O. Cartwright standing in front my cell. Then C.O. Meyers reply: "mother fucker I told you that you ain't seen threat yet." Then C.O. Cartwright said "C.O. run fucking Attica" not the "Superintendent", Deputy of Security, or I.G.

Afterwards they both put me against the "cell bar" and start to choke me. Then they said to me stand by the window on the gallery and witness how we are going to tear your cell apart. Furthermore, C.O. Cartwright said "why you think they call me The Bulldozer." After that they demolish my cell and wrote me up for having 2 home made hot plates, 4 extra state sheets that they themselves give to me coming back from court, 1 Fan that they are trying to say was broken, letter of information, and NFL football score from last season that they are saying is betting slips and also for having a T.V. without NO permit.

After CO Meyers and CO Cartwright finish searching my cell, they said "once again Superintendent, Deputy of Security, or I.G. do not fucking run Attica we do. Therefore, your mother, and the rest of your family can keep on calling the jail again, while they are sucking on a dick". And you can continue to write the Superintendent, Deputy of Security, or I.G. do not fucking run Attica we do. Therefore, your mother, and the rest of your family can keep on calling the jail again, while they are sucking on a dick".

writing. Then they both walk down the gallery.

52540-01

I thought it was over, but 15 minutes after C.O. Meyers and C.O. Cartwright left. An Officer brought an O.J.T. (Rookie) in front of my cell and point his finger into my cell and said to the O.J.T. "this is how you search a nigger cell real thoroughly. Then they left the CO was not wearing his name tag, therefore, I don't know his name.

At this point in time I do not fix back my cell as let. Because I need the Deputy of security, or somebody to see what they did to my cell.

Submitted by

Karvia Hamilton

Karvia Hamilton

FORM #2077 (Rev. 8/01)

NEW YORK STATE - DEPARTMENT OF CORRECTIONAL SERVICES

CONTRABAND RECEIPT

Original - Inmate Copy - D.S.S.

DATE/TIME

9-6-05

LOCATION

42-11

Attica

CORRECTIONAL FACILITY

OFFICER CONDUCTING SEARCH

INMATE NAME:

Hamilton

DIN#

04A5214

SIGNATURE

PRINT NAME

☐ NO CONTRABAND FOUND☒ NO PROPERTY DAMAGED DURING SEARCH

ITEMS CONFISCATED OR DAMAGED

WHERE FOUND

COMMENTS

Suspected Drugs Related

Cell

Given to Sgt. for review

MACHINERY

DRUGS LIKE MADE OF STATE

Cell

Contraband Office

Home made hit plate weapons

Cell

Contraband Office

DISPOSITION OF ITEMS LISTED


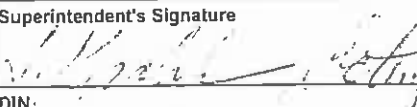
PERSON RECEIVING ITEMS

SIGNATURE

YOU MAY WRITE TO THE DEPUTY SUPERINTENDENT FOR SECURITY WITHIN 7 DAYS OF THIS RECEIPT REGARDING THE CONFISCATION OR DISPOSITION OF THESE ITEMS.

PRINT NAME

FORM 2133 (REV. 8/06)

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p>INMATE GRIEVANCE PROGRAM SUPERINTENDENT</p>	Grievance No. A-52540-07	Date Filed 09/25/07
	Facility Attica Correctional Facility	Policy Designation Institutional
	Title of Grievance Choked, Threatened, Cell Trashed	Class Code 49
	Superintendent's Signature 	Date 10/25/07
Grievant Karvia Hamilton	DIN 04-A-5214	Housing Unit 10/23

Grievance Denied.

This grievance has been investigated by a Sergeant and includes an interview with the grievant, along with written memorandum from staff named.

The grievance states: The grievant was threatened and cell was "trashed".

Upon interview, the grievant reiterated his claims and provided no witnesses or any other pertinent information. Staff is on record denying all allegations. Staff denies threatening the grievant. They do acknowledge that a cell frisk was performed and contraband was found. The Investigating Sergeant could find no evidence to support the grievant's accusations. The Investigating Sergeant states that the grievant's cell was frisked and contraband was found. The grievant was written a misbehavior and subsequently found guilty at a tier hearing.

The evidence provided this reviewer does not warrant an affirmation of this grievance.

This grievance is without merit and is, therefore, denied.

KB/jms

Cc: D.S.S. File

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. * Please state why you are appealing this decision to C.O.R.C.

Grievant's Signature

Date

Grievance Clerk's Signature

Date

Religious Flag

①

16

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

FORM 2131E (REV. 6/06)

INMATE GRIEVANCE COMPLAINT

A-	Grievance No. 8
	53990

ATTICA

CORRECTIONAL FACILITY

Name KARVIA HAMILTON Date _____

Dept. No. 045214 Housing Unit 37/29

Program _____ AM _____ PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible)

See Attached

Grievant
Signature

Grievance Clerk

Date:

179 AUG 2008

Advisor Requested

☒

YES

☐

NO

Who: _____

Action requested by inmate: _____

This Grievance has been informally resolved as follows:

**INMATE DID NOT SHOW UP FOR
HEARING CALLOUTS ON THESE DATES**

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature

[Signature]

Date:

9/5/08

FORM 2131E (REVERSE) (REV. 6/06)

Response of IGRC:

REC. #1.

91 108

(Coordinating Chaplain Rosolowski)

The above references staff member indicates that the flag in question has been returned.

Date Returned to Inmate _____ IGRC Members _____

Chairperson _____

Return within 7 calendar days and check appropriate boxes.*

☐ I disagree with IGRC response and wish to appeal to the Superintendent.

☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent

☐ I agree with the IGRC response and wish to appeal to the Superintendent.

☐ I apply to the IGP Supervisor for review of dismissal

Signed _____

Grievant

_____ Date

_____ Grievance Clerk's Receipt

_____ Date

To be completed by Grievance Clerk.

Grievance Appealed to the Superintendent _____

_____ Date

Grievance forwarded to the Superintendent for action _____

_____ Date

FORM 2131E (5/88)

Religious FLAG

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

INMATE GRIEVANCE COMPLAINT

①

16

Grievance No.

53990-08

Attica

CORRECTIONAL FACILITY

Date August 15th, 2008Name Karvia HamiltonDept.No. 04A5214Housing Unit D-37-29Program School AM School PM

(Please Print or Type - This form must be filed within 14 days of Grievance Incident)

Description of Problem: (Please make as brief as possible) The "Rastafarian flag" that the Rastafarian religious group use while they have services Holy days, as been missing since early July from the "Chapel locker" where the Rastafarian staff advisor kept it with other religious items. Numerous promises as been made that it will be return back to us, but this promise have been unsuccessful at best, because the flag is still missing presently. This flag has been approved by (N.Y.S. DOCS) and also by the lead Rastafarian clergyman Abuna A. Foxe. Therefore, I don't understand why they (whoever) confiscated the flag.

Grievant
SignatureKarvia Hamilton

Grievance Clerk

Date:

19 AUG 2008

Advisor Requested

☐

YES

☐

NO

Who:

Action requested by inmate:

Rastafarian flag please return back as soon as possible.

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

A. FIRST CLAIM: On (date of the incident) October 10th 2008

defendant (give the **name and position held** of **each defendant** involved in this incident) Sergeant Erhardt and Correctional Officer Cartwright

did the following to me (briefly state what each defendant named above did): Defendant Sergeant Erhardt stop plaintiff, while plaintiff was going to recreation, because of plaintiff visible facial hair, resulting from how plaintiff exercise his religion. Defendant Sergeant Erhardt deliberate indifference was demonstrate when he denied plaintiff access to the yard, and stated that "whenever I'm working in D-block you will never go to the yard Defendant Sergeant Erhardt further added that, "he don't give a fuck about you or your religious beliefs. You just have that shit cut off or else!" To add fuel to the situation C.O. Defendant Cartwright started to laugh, made inappropriate comment, and "mocking" plaintiff.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: First Amendment & Eighth Amendment.

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages, Punitive damages and Injunction Relief

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? Grievance Denied

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? UNANIMOUSLY DENIED
CORC notes that he can request aboard exemption in accordance with Directive #4914

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) October 12th 2008

defendant (give the **name and position held** of **each defendant** involved in this incident) Correctional Officer Cartwright

**APPEAL FORM TO THE SUPERINTENDENT
VIOLATION (TIER I) AND DISCIPLINARY HEARINGS (TIER II)***


Name: Karvia Hamilton DIN# 04-A-5214Housing Location 37-29 Attica Correctional FacilityI wish to appeal my ☐ Tier I ☒ Tier II hearing completed on 10/17/08.**STATE SPECIFIC GROUNDS FOR APPEAL:**

SEE ATTACHED

*NOTE: Tier I appeals must be submitted within 24 hours of hearing.
Tier II appeals must be submitted within 72 hours of hearing.

SUPERINTENDENT'S REPLYYour appeal of the Tier II Hearing conducted on 10/17/08 has been reviewed by me. The decision of the hearing officer is hereby:☒ Affirmed☐ Reversed☐ Modified

The decision of the hearing officer is affirmed. I reviewed your hearing records and found no evidence of procedural errors. You are advised to follow the rules and regulations of the facility in the future.


(Superintendent or Designee)

11-7-08
(Date)

CC: Guidance Unit, Hamilton 04-A-5214

RECEIVED

NOV 04 2008

ATTICA CORR. FACILITY
SUPERINTENDENT'S OFFICE

Karvia Hamilton

04A5214

D-37-29.

November 3rd 2008

Dear Mr. James T. Conway

I hereby file this notice of appeal to you. I am aware that I am late to file this notice of appeal, because the 72 hours time line has been expired. However, I am late because of two reasons. ① The company officer who was working the company "37" where I am house at, told me that "he didn't have no appeal form in the "Bubble" that he is in. This was right after I came back from the Tier hearing. ② I was going through some emotional distress, stemming from this same incident. In fact, I have just now learn that I can write a notice of appeal on a piece of paper.

I was found guilty on a "Tier 2" disciplinary ticket. This decision was rendered by Rt. W. Murray on October 17th 2008. The charges are: ① Refusing direct order #106-10, ② Beard/Mustache Length #110-32, ③ False statements or INFO. #107-20. This misbehavior report was written and reported by SGT. M. Erhardt on October 15, 2008.

First of all, me growing my beard is for religious purposes and my religious belief. As who I am, and I am pretty sure that this is on my institution record, I am a "Rastafarian". In addition, my religion is and has an established tenant against the trimming of beards. I acknowledge now that I do need a permit. But in the past I have express a desire and I have apply for a permit. But Reverend Tomlinson advise me that "a permit is not really

1
Necessary due to the fact that I am a register Rastafarian." and this
should cover everything.

However, the action that was taken by SGT. M. Erhardt and this
facility is totally contrary and contradiction to what NYS DOCS
directive #4914 said.

Therefore, with these fact and rules. I believe that this disciplinary
Tier 2 ticket should be reverse.

Respectfully submitted Inmate

KARVIA HAMILTON

04A5214

[Signature]

STATE OF NEW YORK, DEPARTMENT OF CORRECTIONAL SERVICES

49

FORM 2131E (REV. 6/06)

INMATE GRIEVANCE COMPLAINT

Threatened Due to his Beard

A-	Grievance No.
	54348-08

ATTICA

CORRECTIONAL FACILITY

Date _____

Name Hamilton, K. Dept. No. 04A5214 Housing Unit D-37-29

Program _____ AM _____ PM _____

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) _____

Grievant
Signature _____

Grievance Clerk _____

Advisor Requested ☐

Action requested by inmate _____

This grievance has been coded as a harassment grievance. It has been sent directly to the Superintendent's Office for investigation. As soon as the investigation is complete, you will receive a response from the Superintendent or his designee. You need do nothing until you get that response. This copy and grievance number are for your personal files.

1793-94

This Grievance has been informally resolved as follows: _____

23 OCT 2008

HARASSMENT COMPLAINTS MAY NOT BE SIGNED OFF AND

INVESTIGATION MUST BE COMPLETED ONCE LOGGED

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature _____

Date: _____

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

ge 1 d 3

Threatened DUE

5434: 00 49

to His BEARD

Name: Karvia Hamilton

DIN#: 04A5214

cell: D-37-29

Facility: Attiza Correctional Facility

Date: October 15th 2008Grievance

On the morning of October 10th 2008 at approximately 10:00 a.m. I was on my way to recreation in D-block yard. While I was passing through D-block hallway. A Sergeant, which I will learn his name later, to be Sergeant Erhardt, saw while I was on my way to D-block yard, Sergeant Erhardt and a couple of C.O.s order me to get against the wall to be subjected to a random pat frisk search. I comply with this pat frisk search willingly. After the search was finish, which produce no contraband, Sergeant Erhardt told me that "I need to shave my beard and I need to cut my hair, or else whenever he is working in D-block, I will never go to the yard". I told him that "I respect his authority as a Sergeant, but me growing my hair and my beard is my religious belief and I have the right to do this". Sergeant Erhardt reply was "he don't give a fuck about me, nor my religious belief, you just have that shit cut or else!". Then after he said this a couple of C.O.s who was in the hallway started to laugh. From there on, the sergeant order me to take it back to my cell, because I am not going to no yard recreation.

However, according to this facility rule book (Attiza Correctional Facility inmate orientation guideline manual) page 70 clearly stated in part "16.1 beards and/or mustache are not to exceed one (1) inch in length. There are specific exceptions to this rule which can be found in Directive # 4914. These exemptions involve either a court order or an approved exemptions base on an inmate documented membership in a religion which has an established... Therefore with this said I don't know"

pg 2 of 3

54348-08

here this mixture, confusion, and harassment is coming from.

At that point I say to myself that "I was going to leave the matter alone." Because it was probably a misunderstanding or a misjudgement on the Sergeant's part, because I never had this type of problem since I am at this facility and I am in Attica going on three years now. Another reason why I say to myself that "I was going to leave the matter alone." I was figuring out that the Sergeant is just simply having a bad day. I say this because in the past, I have dealt with him on an issue and he has ruled fairly. I also saw him deal with other inmates on issues and he solve the matter fairly, too.

Now on the morning of Sunday, October 12th 2008 at approximately 3:28 am. Once again I was on my way to recreation in D-block yard. Now this time around, while I am on my way to D-block yard. I had made it pass D-block hallway and through the gate approaching D-block yard. When I heard a voice shout from behind me "A" you Mr. Hamilton come here! I looked back behind me, where I saw a C.O. by the name of "J. Cartwright". He C.O. J. Cartwright called me back and said to me that "do you have the permit on you for your beard that the Sergeant on Friday morning say that you suppose to have?" I told him no, I don't need a permit because my religion is against the trimming of beard and furthermore this is my rights. C.O. J. Cartwright reply was "then you cannot go to the yard, take it back the fuck in!"

So base on those words and actions from both the Sergeant and the C.O. This is not a case of misunderstanding or misjudgement, nor a case of a Sergeant having a bad day, This is a case of hatred and harassment.

Ironically, this was one of the same C.O.s (J. Cartwright) that was keep going into my cell, search my cell, and confiscated my religious articles and turn off my electricity. In fact, it was around this time last year (2007). See grievance #A-52540-07 read by CORE on 11/19/07. This C.O. used to confiscate my religious article and talk about "he was confiscating my religious material" But up to this day I have

ge 3 of 3

54348-08

st" received a disciplinary ticket for unauthorized activity. Furthermore, some of these religious articles have not yet returned to me.

Therefore, with this officer (S. Zartwright) and this Sergeant (Erhardt), I see a challenge to my existence, my religious belief, and my way of life.

Now presently, I have cut my beard off but not my hair. I cut my beard off in fear of my life. The reason why I cut my beard, is because in the ^{morning} of Wednesday, October 15th 2008 at approximately 8:28 am. Sergeant Erhardt saw me going to school program via Chow. Sergeant Erhardt stopped me and said to me that "he is Tired of my fucking game, and right now he is giving me a direct order Today, Today! right on this spot to cut my beard off and if I do not comply he is going to write me up for disobeying direct order and ^{for} growing a beard above one inch." In addition, Sergeant Erhardt said "eat" or if you want it could get worst and you lose a couple of your teeth or your fuck-life".


I was about to explain my side of the story to him. When Sergeant Erhardt stopped me in my track, and said that "I don't want to hear shit, you are keep lock". Then he walked away from me.

From there on, I take it back to my cell, borrow the company Porter beard Trimmer, and cut my beard off. But Sergeant Erhardt still wrote me up for: disobeying direct order, ²growing a beard above one inch, and ³lying and making false statements.

Grievant Signature: Kamrin Hamilton

Date: 10/16/08

FORM 21-32 (REV. 8/06)

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES INMATE GRIEVANCE PROGRAM	Grievance No.	A-54348-08	Date Filed	10/23/08
	Facility	Attica Correctional Facility	Policy Designation	Institutional
	Title of Grievance	Threatened Due To His Beard	Class Code	49 (2005) AN
	Superintendent's Signature	<i>[Signature]</i>	Date	12/01/08
	Grievant	Karvia Hamilton	Housing Unit	37/29

Grievance Denied.

Grievant alleges that on 10/16/08, at approximately 10:00a.m., he was on his way to recreation in D-Block Yard. A sergeant and several officers then ordered him to the wall for a random pat-frisk. The sergeant then told him, I need you to shave your beard and I need you to cut your hair, or else, whenever I am working in D-Block, you will never go to the yard. After the pat-frisk, the grievant alleged that the sergeant denied him recreation and ordered him to his cell area. Grievant also alleges that an officer asked him for a permit for his beard, and when he did not produce it, the officer then denied him recreation. The grievant also stated that the officer who had asked him for a permit for his beard is the same officer who continues to search his cell, confiscate religious articles and turn off his electricity in his cell area. Grievant also alleged that a sergeant threatened him with bodily harm and wrote him a misbehavior report for several rule violations.

The grievant was interviewed by a security lieutenant regarding his allegations. The grievant stated that employees are violating his religious rights as a Rastafarian and wrote him a misbehavior report for violating the one-inch beard rule. The grievant further stated he did not have a beard exemption permit and he shaved his beard before his tier hearing. Grievant stated that he appealed his tier hearing based on being found guilty for the rule violations, but his appeal was denied.

The involved staff has submitted memorandums, which refute the allegations made by the grievant. The staff stated that they conducted themselves in a professional manner and did not threaten or deny the grievant of entitled privileges.

Therefore, as a result of the findings in this investigation, this investigation did not substantiate any validity to the allegations made by the grievant, nor did it find any wrongdoing that had been committed by staff.

CR/jms

Cc: File

SENT BY
 1/29/09
 [Signature]

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. * Please state why you are appealing this decision to C.O.R.C.


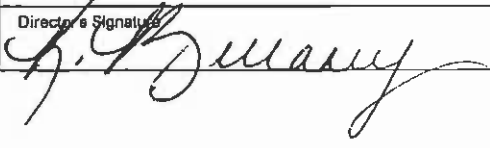
Grievant wish to appeal this decision. The reason why is because, the
conduct and procedure by the staff at Attica Correctional Facility contradict
NYS (DOCS) policy and Directive #4914 in it totality and at best

Karvia Hamilton
 Grievant's Signature

1/29/09
 Date

Grievance Clerk's Signature

Date

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p>INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE</p>	Grievance Number A-54348-08	Desig./Code I/49	Date Filed 10/23/08
	Facility Attica Correctional Facility		
	Title of Grievance Threatened Due To His Beard		
	Director's Signature 		Date 3/18/09

3/18/09

GRIEVANT'S REQUEST UNANIMOUSLY DENIED

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied. CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the facility administration has conducted a proper investigation and that staff deny harassing the grievant. Contrary to the grievant's assertions, CORC has not been presented with sufficient evidence to substantiate any malfeasance by the staff.

With respect to the grievant's appeal, CORC notes that he can request a beard exemption in accordance with Directive #4914, Inmate Grooming Standards.

Rj/

Trans.

Hamilton, K. 04A5214

did the following to me (briefly state what each defendant named above did): Defendant Cartwright exercised deliberate indifference with plaintiff. When he denied plaintiff access to go to recreation when plaintiff was attempting to enter the yard once again. Suggesting that he is carrying on what Sergeant Erhardt has started. This was confirm when defendant Cartwright ask plaintiff, "do you have the permit that the Sergeant said you suppose to have?" when plaintiff reply NO; Defendant Cartwright told plaintiff, "then you cannot go to the yard take it back the fuck inside!

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment.

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages, Punitive damages, and Injunction relief.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? Grievance Denied

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? Unanimously Denied
(please be advise, Grievance No. # A-54348-08 apply to all claim in this matter)

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

Wherefore, Karvia Hamilton prays for judgement in his favor and damage in his favor against all defendants in an amount sufficient to compensate him for the pain and mental anguish suffered by him due to the deliberate indifference and intentional misconduct of defendant but in NO event less than \$13000000, together with his attorney fees and cost, and such additional relief as the court may deem just and proper.

Do you want a jury trial? Yes ☒ No ☐

Attachment from page 6

A. THIRD CLAIM: On (date of the incident) Wednesday, October 15th 2008.
defendant (give the name and position held of each defendant involved in this
incident)

Sergeant Erhardt and Superintendent James T. Conway

did the following to me (briefly state what each defendant named above did): Defendant, Sergeant Erhardt place plaintiff on Keeplock and wrote plaintiff a misbehavior report without proper Department of Correctional Services procedures. As a result of defendant Sergeant Erhardt conduct, plaintiff was force to cut his beard off. In addition, before plaintiff cut his beard off, Defendant James T. Conway, becomes aware that plaintiff is about to get deprive of his property; After becoming aware of this violation, Defendant James T. Conway failed to remedy the wrong. Defendant James T. Conway choose not to remedy the wrong, when Defendant Sergeant Erhardt told him that, don't listen to this guy, he want to talk to you about that stupid beard that he don't want to cut. The constitutional basis for this claim under 42 U.S.C. § 1983 is: First Amendment,

Eighth Amendment and Fourteenth Amendment

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages, Punitive damages, and Injunction relief

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes ☒ No ☐ If yes, what was the result? Grievance denied

Did you appeal that decision? Yes ☒ No ☐ If yes, what was the result? denied (please be advise, Grievance No. A-54348-08 apply to all claim in this matter)

Attach copies of any documents that indicate that you have exhausted this claim.
If you did not exhaust your administrative remedies, state why you did not do so:

Attachment from page 6

B. FOURTH CLAIM: On (date of the incident) October 17th 2008
defendant (give the name and position held of each defendant involved in this incident)

W. Murray Lieutenant

did the following to me (briefly state what each defendant named above did): Defendant Lieutenant Murray exercise deliberate indifference to plaintiff by sentence plaintiff with prison sanctions, which was not legally obtain by law or by Department of Correctional Services standard. This deliberate indifference was demonstrated when defendant Lieutenant Murray stated at the Tier hearing that, "he know that I am exercising my religion, but we have to stick together as officer".

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment

The relief I am seeking for this claim is (briefly state the relief sought): compensatory damages, punitive damages, and Injunction relief

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes ☒ No ☐ If yes, what was the result? Grievance Denied

Did you appeal that decision? Yes ☒ No ☐ If yes, what was the result? unanimously denied (please be advise, Grievance No. A-54348-08 apply to all claim in this matter)

Attach copies of any documents that indicate that you have exhausted this claim.
If you did not exhaust your administrative remedies, state why you did not do so:

Attachment from page 6

B. FIFTH CLAIM: On (date of the incident) _____.

defendant (give the name and position held of each defendant involved in this incident)

Brian Fischer, Commissioner

did the following to me (briefly state what each defendant named above did): ~~Commissioner~~
Defendant Commissioner Brian Fischer exercise deliberate indifference to plaintiff, Commissioner Brian Fischer deliberate indifference was demonstrated when he develops an UNCONSTITUTION policy to continue and failed to inform staff of and train them on policies design to avoid constitution deprivation.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages, Punitive damages, and Injunction relief.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes ☒ No ☐ If yes, what was the result? Grievance denied

Did you appeal that decision? Yes ☒ No ☐ If yes, what was the result? unanimously denied (please be advise, Grievance No. #A-54348-08 apply to all claim in this matter)

Attach copies of any documents that indicate that you have exhausted this claim. If you did not exhaust your administrative remedies, state why you did not do so: _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19th 2010
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Karri Hamill

Signature(s) of Plaintiff(s)

Sworn to me on
19 day of April, 2010

Patricia L.

PATRICIA LEWIS
Notary Public-State of New York
Reg # 01LE6173319
Qualified in Dutchess County
Commission Expires 08/27/2011